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March 8, 2004

**VIA EMAIL, FACSIMILE, & REGULAR MAIL**

William Ellis, Esq.  
Peter Burrell, Esq.  
Wood & Lamping LLP  
600 Vine Street, Suite 2500  
Cincinnati, Ohio 45202

**Re: *Jeffries v. DMS: Outstanding Discovery***

Dear Bill and Peter:

I am writing to request defendant's production of outstanding documents and information. For the plaintiff to adequately and efficiently prepare for the Summary Jury Trial and Trial, it is essential that you advise me by the end of the day tomorrow (Tuesday, March 9, 2004) whether defendant intends to produce the information identified below.

**Defendants' Financial Information**

Defendants' financial information is relevant, admissible, and material to plaintiff's bad faith claim and request for punitive damages. Earlier in this litigation, Judge Hogan allowed the defendants to refrain from producing the requested financial information until after the Court decided the "inevitable motions for summary judgment." Two weeks ago (prior to the Court's decision denying defendant's motion for summary judgment on Mr. Jeffries' bad faith claim), I requested that you assemble the requested financial information and have it ready for production. I have heard nothing from you on this issue. Please produce as soon as possible:

1. The annual and/or consolidated financial statements for the defendant Centre Life and the same material for DMS for the period 1999 to the present;
2. All financial reports exchanged between DMS and Centre for the period 1999 to the present; and

William Ellis, Esq.

March 8, 2004

Page 2

3. All budgets and financial reports relating to DMS' Centre Life block of business from 1999 to the present.

### **Back-up Tapes**

On December 12, 2003, you advised me that by Christmas the defendants' may be in a position to host plaintiff's computer expert to observe the search for information contained on defendants' back-up tapes. Since Christmas, all of my time (and all of plaintiff's resources) have been consumed by depositions, opposing defendant's motions for summary judgment, and opposing defendant's *Daubert* motions. Unfortunately, as a result, plaintiff cannot afford to send his computer expert to Boston/Springfield to oversee the production of information stored on the back-up tapes. Accordingly, although plaintiff has great misgivings with the procedure, I request that defendant proceed to search the tapes and produce all information without a representative of plaintiff present. As the Court ordered, the back-up tapes should be searched for the terms "Jeffries" and "0641734," the claim number. I will expect these documents before April 1, 2004. (*See, Transcript of October 22, 2003, Telephone Conference with J Beckwith, p. 45: "do it forthwith"*).

### **Bad Faith Suits**

Plaintiff has requested information concerning bad faith suits involving the defendants. Originally, defendant refused to produce the information under the grounds that the information was too burdensome to produce. In October 2003, Attorney Cohen (in-house counsel for DMS) executed an Affidavit indicating that there have been 9 "bad faith" suits filed against the defendants in the states encompassing the 6<sup>th</sup> Circuit. (*See, Cohen Affidavit Doc. 93*). It would not appear burdensome for defendant to identify those 9 case captions. Please do so.

### **Unproduced Surveillance Materials**

The following surveillance related materials identified as withheld in your Privilege Log still have not been supplied despite the Court's order to produce them following Mr. Jeffries' deposition. Please produce these immediately:

- Claim 00266-00270;
- Claim 01080;
- Claim 01131-01132;
- Claim 01897-01898;
- Claim 01925-01927;
- Claim 02132-02134;
- Claim 02188-02190;
- Claim 02196-02206;
- Claim 02278;
- Claim 02281-02282;

William Ellis, Esq.

March 8, 2004

Page 3

- Claim 02371-02372;
- Claim 02752;
- Claim 02763-02768;
- Claim 02819;
- Claim 02822-02823;
- Claim 02835; and
- Claim 02902-02906.

I can come by this afternoon to pick these materials up if that is easier.

**Copy of Administrative Service Agreement Between Centre and DMS**

Also, it will be essential at Trial that I introduce a copy of the Administrative Services Agreement between Centre and DMS as an exhibit. Can we agree to your production of this information now or should we discuss this with the Court?

**Follow-Up To Performance Evaluations Produced Late**

On November 18, 2003, you belatedly produced certain personnel files. Following up on that production, produce:

1. All documents showing DMS' "business performance goals set for the MCIC (aka Centre Life) block of business" and the documents which reflect DMS' "exceeding those goals." (*See, John Midghall Review, Bates label DMS 047-053*). These are covered by Document Request No. 2 from Plaintiff's 2<sup>nd</sup> Set and Document Request No. 4 from Plaintiff's 3<sup>rd</sup> Set, but given the late production of the evaluations, I am entitled to follow up and would have earlier but for the all encompassing other pretrial procedures in the case;
2. Produce documents labeled DMS 0001-0015 and 026. These were not included in your November 18 package; and
3. Produce unredacted copies of 016-099. You unilaterally redacted these materials without any discussion, notice, or explanation. Alternatively, make unredacted documents available for my review in your office.

**Verified Responses**

Please send me a Verification page to defendant's responses to its Supplemental and Second Supplemental Discovery Responses as soon as possible.

William Ellis, Esq.

March 8, 2004

Page 4

**Subpoenaed Materials**

Pursuant to Rule 26, defendant's have a continuing duty to produce information. During the course of the litigation, and even into late November 2003 - long after the discovery deadline had passed, you issued subpoenas to 3<sup>rd</sup> parties (e.g., Drs. Boyd Crafton and Michael Meader on November 21, 2003). Produce copies of all documents generated from any subpoena you have issued in the case.

I look forward to an efficient, non-adversarial, and prompt resolution of these issues.

Sincerely,

GRAYDON HEAD & RITCHEY LLP

A handwritten signature in black ink, appearing to read "Michael A. Roberts", written over the firm name.

Michael A. Roberts

MAR/csc

Copy: Mr. Eric Jeffries

Cliff Shoemaker, Esq.